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Opinion following transfer from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH STUBBS,

Defendant and Appellant.

B255946

(Los Angeles County
Super. Ct. No. SA085771)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark E. Windham, Judge. Modified and, as modified, affirmed with directions.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph Stubbs was convicted of receiving stolen property. His sentence included nine one-year prior conviction enhancements pursuant to Penal Code section 667.5, subdivision (b).¹ He appealed and, during the pendency of his appeal, he successfully petitioned under Proposition 47 (the Safe Neighborhoods and Schools Act) to have three of the prior convictions reduced to misdemeanors (§ 1170.18). He then petitioned for recall of sentence and resentencing, arguing that the three enhancements had to be stricken because the underlying convictions had been reduced to misdemeanors. The trial court denied his petition and we rejected his argument and affirmed the judgment. (*People v. Stubbs* (July 7, 2016, B255946) [nonpub. opn.] (*Stubbs I.*)). The Supreme Court granted review and later transferred the matter to us with directions to vacate our opinion and to reconsider the cause in light of *People v. Buycks* (2018) 5 Cal.5th 857 (*Buycks*). The People now concede that *Buycks* requires us to strike the three enhancements. Accordingly, we modify the judgment by striking them but otherwise affirm the judgment.

BACKGROUND

The three prior convictions at issue are a 1987 burglary conviction (L.A. Super. Ct. case No. CR12887) and two receiving stolen property convictions, one in 1999 (L.A. Super Ct. case No. SA035229) and one in 2003 (L.A. Super. Ct. case No. SA048354). On March 26, 2014, a jury convicted Stubbs of receiving stolen property. The trial court found true the

¹ All further statutory references are to the Penal Code.

allegations Stubbs suffered nine convictions for which he served prison terms (§ 667.5, subd. (b)), including the three at issue here. The court sentenced Stubbs to the upper term of three years plus nine years for the prior convictions. It suspended execution of sentence and placed Stubbs on mandatory supervision for three years. On April 28, 2014, Stubbs filed a notice of appeal.

Proposition 47 became effective on November 5, 2014.² Stubbs successfully petitioned to have the three prior convictions reduced to misdemeanors under Proposition 47.

On July 31, 2015, Stubbs filed a petition for recall of sentence and resentencing (§ 1170.18, subd. (k)) under Proposition 47, seeking to vacate the three section 667.5, subdivision (b), enhancements based on the convictions that were reduced to misdemeanors. On September 9, 2015, the trial court denied the petition.³

On July 7, 2016, we issued our opinion in *Stubbs I*. We “conclude[d] that Proposition 47 does not apply retroactively to previously-imposed section 667.5, subdivision (b) sentence

² In January 2015, Stubbs filed a Proposition 47 petition for recall of sentence and resentencing, requesting the trial court to resentence him on his receiving stolen property conviction. On February 9, 2015, the trial court denied the request on the ground Stubbs was ineligible for Proposition 47 relief because the value of the property at issue exceeded \$950. The record does not demonstrate Stubbs later filed any notice of appeal with respect to that denial. The validity of that denial is not at issue in this appeal.

³ Stubbs appealed that denial. The appeal subsequently was dismissed.

enhancements.” (*Stubbs I, supra*, B255946 at p. 2.) We held that “Proposition 47’s redesignation of a felony as a misdemeanor operates from the moment of redesignation forward and that the redesignation does not retroactively alter the designation of that crime as a felony.” (*Id.* at p. 8.) We noted that this issue was then pending before the Supreme Court. (*Id.* at pp. 3-4, 9.)

Stubbs filed a petition for review. The Supreme Court granted review and deferred further action pending its resolution of the issue. On September 19, 2018, the Supreme Court transferred the matter to us with directions to vacate our opinion and to reconsider the matter in light of *Buycks*.

DISCUSSION

In *Buycks*, the court held “that Proposition 47’s mandate that the resentenced or redesignated offense ‘be considered a misdemeanor for all purposes’ (§ 1170.18, subd. (k)) permits defendants to challenge felony-based section 667.5 and 12022.1 enhancements when the underlying felonies have been subsequently resentenced or redesignated as misdemeanors.” (*Buycks, supra*, 5 Cal.5th at p. 871.)

The court “consider[ed] the terms of and intent behind the pertinent provisions of Proposition 47, including the significance of Proposition 47’s mandate that the felonies reduced under its provisions ‘shall be considered a misdemeanor for all purposes.’ (§ 1170.18, subd. (k).) From this, [the court] conclude[d] that the ‘misdemeanor for all purposes’ provision operates prospectively—by having ameliorative effect on any new collateral consequence imposed after a successful Proposition 47 resentencing. However, because Proposition 47 is a measure designed to ameliorate

punishment, the ‘misdemeanor for all purposes’ language also requires felony-based section 667.5 and 12022.1 enhancements to be retroactively stricken, but only with regard to judgments that were not final at the time the initiative took effect.” (*Buycks, supra*, 5 Cal.5th at p. 876, fns. omitted.)

The April 28, 2014 judgment in this case was not final when Proposition 47 took effect on November 5, 2014. Accordingly, Stubbs was entitled to have the three section 667.5 enhancements based on the convictions that were reduced to misdemeanors stricken. (*Buycks, supra*, 5 Cal.5th at p. 876.) The People concede that because Stubbs’s “current appeal was pending at the time Proposition 47 took effect,” “the judgment was not final” and, consequently, the three enhancements must be stricken. We accept the concession and we will strike the three enhancements.⁴

⁴ In their supplemental letter brief, the People concede the three enhancements must be stricken, and they do not request a remand for resentencing. In his supplemental letter brief, Stubbs asserts the three enhancements must be stricken, and he “should be resentenced accordingly.” He does not explain why a remand for resentencing is necessary. The trial court imposed the maximum possible county jail sentence then exercised leniency by suspending execution of sentence. There is no reason to believe that, if we remanded the case for resentencing, the trial court would change the sentence in any way other than to strike the three enhancements. Accordingly, there is no need to remand for resentencing; such a remand would be an idle act. (Cf. *Buycks, supra*, 5 Cal.5th at p. 896, fn. 15.)

DISPOSITION

The judgment is modified by striking Stubbs's three section 667.5, subdivision (b), enhancements based on superior court case Nos. CR12887, SA035229, and SA048354, and, as modified, the judgment is affirmed. The trial court is directed to forward an amended abstract of judgment reflecting the above modification to the Department of Corrections and Rehabilitation.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.